

Message Text

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PAGE 01 MANILA 12651 201534Z

44

ACTION EA-09

INFO OCT-01 ISO-00 CIAE-00 PM-04 H-02 INR-07 L-03 NSAE-00

NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 DHA-02 ORM-02

OMB-01 TRSE-00 IO-13 JUSE-00 /074 W

----- 065720

R 200729Z AUG 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 9202

INFO SECDEF WASHDC

JCS WASHDC

CINCPAC HONOLULU

CINCPACFLT

CINCPACAF

CINCPACREPPHIL SUBIC

CG 13TH AF CLARK

C O N F I D E N T I A L MANILA 12651

FROM USDEL 220

CINCPAC ALSO FOR POLAD

E. O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: ASYLUM AND REFUGE

REF: A. STATE 198546, DTG 102347Z AUG 76

B. STATE 203902, DTG 171244Z AUG 76

1. US REPS DISCUSSED PROPOSED CHANGE TO AD REFERENDUM
PARAGRAPH ON ASYLUM AND REFUGE AS CONTAINED IN REFTEL A AND
AUTHORIZED TO TABLE IN REFTEL B AND GENERALLY MET WITH
PHIL REPS PUZZLEMENT ON THE NEED OR DESIREABILITY OF SUCH
CHANGES. EACH OF THE PROPOSED CHANGES CONTAINED IN PARA 3
REFTEL A DISCUSSED BELOW. RP REPS WOULD NOT APPROVE THE
INSERTION OF THE WORD "LAWFUL" BEFORE JURISDICTION AS BEING
TOTALLY UNNECESSARY. THEY ALSO DEEMED IT RATHER DEROGATORY
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PAGE 02 MANILA 12651 201534Z

TO EVEN SUGGEST THAT THE PHILIPPINES MIGHT ATTEMPT TO

ASSERT "UNLAWFUL" JURISDICTION. US REPS AGREE THAT TERM "LAWFUL" IS NOT NECESSARY. THERE IS ONLY ONE TYPE OF JURISDICTION THAT WOULD BE RECOGNIZED AND THE TERM JURISDICTION CONVEYS THE CRITERIA OF LAWFUL. RECOMMEND WE BE AUTHORIZED NOT TO INSERT THE WORD "LAWFUL".

3. THE DELETION OF THE WORD "FOUND" AND INSERTION OF "DISCOVERED BY US AUTHROITIES" WAS LOOKED UPON BY THE PHIL REPS AS A HEDGE BY THE U.S. TO ITS OBLIGATION AND WAS NOT ACCEPTABLE. RP REPS FELT THAT THE WORD "FOUND" WAS A NEUTRAL TERM THAT OF COURSE REQUIRED U.S. KNOWLEDGE THAT THE PERSON WAS ON THE FACILITY. THEY WERE CONCERNED THAT DELETING "FOUND" AND INSERTING "DISCOVERED BY U.S. AUTHORITIES" WOULD ALLOW THE U.S. TO REFUSE TO TURN OVER A PERSON IF KNOWLEDGE OF SUCH A PERSON BEING IN THE FACILITY WAS FIRST CONVEYED TO U.S. BY RP AUTHORITY. THEY REASONED THAT IN SUCH EVENT HE WOULD NOT BE "DISCOVERED" BY U.S. AUTHORITIES AND THEREFORE PARAGRAPH IN QUESTION WOULD NOT COME INTO OPERATION. U.S. REPS EXPLAINED THIS WAS CERTAINLY NOT THE PURPOSE OF THE CHANGE BUT TO NO AVAIL. IN FURTHER DISCUSSION PHILS SUGGESTED DELETION OF BOTH "FOUND" AND "DISCOVERED BY U.S. AUTHORITIES" AS A COMPROMISE, BUT WOULD STILL PREFER THE WORD "FOUND". WHATEVER WORD THAT IS FINALLY AGREED UPON, IT IS FULLY UNDERSTOOD THAT THERE WOULD OF COURSE BE NO U.S. OBLIGATION UNLESS WE HAVE KNOWLEDGE AND CAN ACTUALLY LOCATE THE PERSON. U.S. REPS RECOMMEND WE KEEP THE WORD "FOUND" AS CONTAINED IN AD REFERENDUM TEXT (MANILA 10806, US DEL 0148; DTG 230051Z JUL 76) BUT AS A FALLBACK TO DELETE BOTH "FOUND" AND WASHINGTON REQUESTED INSERTION.

4. RP REPS REFUSED AT FIRST TO DELETE "FORTHWITH" BUT THEN SUGGESTED THE USE OF THE WORD "PROMPTLY" BASED UPON THE FACT THAT SUCH TERM IS USED IN CRIMINAL JURISDICTION ARTICLE IN REFERENCE TO PHILIPPINE OBLIGATION TO NOTIFY AND TURN OVER US PERSONNEL WHEN ARRESTED BY PHILIPPINE AUTHORITIES. IT WOULD BE HARD AND PERHAPS UNREASONABLE NOT TO CONCUR WITH THIS SUGGESTION BASED ON THE ABOVE REASONS, THEREFORE, U.S. DEL RECOMMENDS THE USE OF THE WORD "PROMPTLY."

5. U.S. REPS ASSUMED THAT "WHO MAY REQUEST HIS SURRENDER" CONFIDENTIAL

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PAGE 03 MANILA 12651 201534Z

WAS MEANT NOT TO APPLY TO US OBLIGATION TO TURN INDIVIDUAL OVER TO THE PHILIPPINE BASE COMMANDER BUT WAS MEANT ONLY TO APPLY TO OTHER "COMPETENT PHILIPPINE AUTHORITY". RP REPS AGREED TO THIS CHANGE IF WE MADE THIS CLEAR. THE AGREED CLAUSE WOULD THEN READ "...BE SURRENDERED PROMPTLY TO PBC, OR THE COMPETENT PHIL AUTHORITY WHO MAY HAVE REQUESTED HIS SURRENDER." U.S. REPS RECOMMEND THE ABOVE CHANGE BE APPROVED.

6. RP REPS AGREED IN PRINCIPLE FOR PARA TO CONTAIN A SENTENCE REFLECTING THAT PROVISIONS IN QUESTION DO NOT AFFECT RIGHT OF U.S. TO RETAIN CUSTODY OVER U.S. PERSONNEL. HOWEVER, THEY COULD NOT AGREE TO PRECISE WORDING UNTIL CUSTODY MATTER RESOLVED IN CRIMINAL JURISDICTION ARTICLE; BUT ASSURED U.S. REPS THAT IF REMAINDER OF PARAGRAPH ON ASYLUM AND REFUGE IS APPROVED, ONCE CRIMINAL JURISDICTION IS AGREED, THEY WOULD AGREE TO CLAUSE REFLECTING US CONCERN IN THIS AREA. APPROVAL OF PARA WOULD BE CONDITIONED ON SUCH INCLUSION AT THE APPROPRIATE TIME. US REPS BELIEVE THIS WOULD CREATE NO DIFFICULTY AND RECOMMEND WE ACCEPT RP ASSURANCE.

7. THE REVISED PARAGRAPH WOULD READ AS FOLLOWS:

QUOTE:

EVADING JURISDICTION

SHOULD ANY PERSON SEEKING TO EVADE THE JURISDICTION OF THE PHILIPPINES BE FOUND IN ANY FACILITY WITHIN PHILIPPINE MILITARY BASES WHICH HAVE BEEN DESIGNATED FOR U.S. USE, OR IN A VESSEL OR AIRCRAFT OF THE U.S. WITHIN THE TERRITORY OF THE PHILIPPINES, HE SHALL BE SURRENDERED PROMPTLY TO THE PHILIPPINE BASE COMMANDER, OR THE COMPETENT PHILIPPINE AUTHORITY WHO MAY HAVE REQUESTED HIS SURRENDER. THE U.S. SHALL ALSO NOT ALLOW THE USE OF ANY OF ITS VESSELS OR AIRCRAFT WITHIN THE TERRITORY OF THE PHILIPPINES AS A MEANS FOR SUCH PERSON TO EVADE THE JURISDICTION OF THE PHILIPPINES. END QUOTE.
(SENTENCE ON CUSTODY PROVISION TO BE ADDED AFTER CRIMINAL JURISDICTION ARTICLE AGREED.)

8. ACTION REQUESTED: APPROVAL OF THE ABOVE PARAGRAPH
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PAGE 04 MANILA 12651 201534Z

ASAP IN ORDER TO RESOLVE THIS MATTER PRIOR TO DEPARTURE OF MENDOZA ON SEPTEMBER 1ST.
SULLIVAN

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NNN

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